

LEGAL MEMO

TO: SJ11 TASK FORCE MEMBERS
FROM: MICHAEL S. KAKUK, ATTORNEY
RE: MEMO RE: SJ11 TASK FORCE PROPOSED
AMENDMENTS TO SB0110
DATE: FEBRUARY 9, 2007

PURPOSE AND DISCLAIMER

I have been asked to prepare a brief summary of the SJ11 Task Force consensus amendments to SB0110. This is provided below.

PLEASE NOTE: This memo has not been reviewed by Task Force members and their comments on intent and impact of these amendments may vary. The comments in this memo are mine alone and have not been reviewed or approved by any other group or individual.

AMENDMENT SB011001.ALH

Amendments 1 through 3.

Remove sections 76-2-228 and 76-2-328 from the title and insert 76-1-103.

MSK Comments: This amendment just deals with the title and is necessary since all changes to 76-2-228 and 76-2-328 were removed from the bill and changes are now being made to 76-1-103. In other words, 76-2-228 and 76-2-328 are not being amended in any way through SB0110.

Amendment 4.

Adds a repealer and an effective date to the title. See also Amendments 35 and 37 below.

Amendment 5.

Makes the following change to 76-1-103:

(4) "Growth policy" means ~~a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.~~

MSK Comments: This amendment clarifies that master plans or comprehensive plans are no longer considered, and may not be used as,

growth polices. Note: There is no requirement to have a growth policy unless the jurisdiction is going to adopt zoning.

Amendment 6.

Makes the following changes to 76-1-505(2)(c), (SB0110, Section 10):

~~(c) The notice is to must be published in a newspaper published in the county not less no fewer than 10 or more than 20 days prior to the date of said the hearing in accordance with 7-1-2121 Thereafter~~

MSK Comments: This amendment standardizes local government publication requirements.

Amendment 7.

Makes the following changes to section 76-1-505(2)(e), (SB0110, Section 10).

~~(e) A resolution shall may not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders resident real property owners of the territory proposed to be embraced included.~~

MSK Comments: This amendment goes back to existing law and allows non-resident property owners to “disapprove” a boundary extension resolution.

Amendment 8.

Makes the following changes to 76-2-101, (SB0110, Section 11):

~~(1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected freeholders real property owners of the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.~~

MSK Comments: This amendment returns to current law.

Amendments 9, 10, and 11.

Make the following changes to SB0110, New Section 13:

~~1) A knowing, negligent, or purposeful violation of this part or of a resolution adopted pursuant to this part is a misdemeanor and shall be punishable by a fine of up to \$500 or by imprisonment in the county jail for a term not exceeding 6 months, or both. The violation is an absolute liability offense as provided for in 45-2-104.~~

(2) The governing body may also provide civil penalties not to exceed \$100 for a violation of this part or of a resolution adopted pursuant to this part. Each day of violation constitutes a separate violation. A governing body may not assess a fine for any period of time prior to the violator being given notice in writing of the violation.

MSK Comments: These amendments clarify the uniform zoning violation sections of law by allowing local government to use either civil or criminal enforcement mechanisms to enforce Part 1 county zoning while providing basic due process protections. These amendments satisfy the code commissioner's concern with these sections. See also amendments 13 through 15, and 18 through 20.

Amendment 12.

Makes the following change to 76-2-203, (SB0110, Section 16) county zoning:

Zoning regulations must be:

...

(b) designed to:

(i) ~~lessen congestion in the streets;~~

secure safety from fire, ~~panic~~, and other dangers;

MSK Comments: This amendment, striking "panic", is in response to a comment from a SLG Committee member and is intended to further modernize the zoning code.

Amendments 13, 14, and 15.

Make the same changes to Part 2, county zoning as made to Part 1 county zoning discussed above in Amendments 9 through 11.

Amendment 16.

Removes all changes to 76-2-228, (SB0110, Section 20).

Amendment 17.

Makes the same change to municipal zoning as made to county zoning discussed above in Amendment 12.

Amendments 18, 19, and 20.

Make the same changes to municipal zoning as made to Part 1 and 2 county zoning discussed above in Amendments 9 through 11, and amendments 13 through 15.

Amendment 21.

Removes all changes to 76-2-328, (SB0110, Section 25).

Amendments 22 and 23.

Make the following changes to 76-3-207(1), (SB0110, Section 27):

Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under exempt from review under parts 5 and 6 of not subdivisions under this chapter; but but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land not amounting to other than subdivisions; and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

MSK Comments: This amendment reverts back to existing law clarifying that use of the exemptions in this section does not result in “subdivisions”.

Amendments 24 and 25.

Make the following changes to 76-3-207(1)(f), (SB0110, Section 27):

(f) aggregation of lots when a certificate of survey or subdivision plat will show shows that the boundaries of the original parcels have been expunged eliminated and the boundaries of a larger aggregate parcel will be depicted are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

MSK Comments: These amendments clarify the intent of the new language regarding aggregations.

Amendment 26.

Makes the following change to 76-3-207(2)(b), (SB0110, Section 27):

. . . a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions review under parts 5 and 6 the provisions the provisions of~~ this chapter.

MSK Comments: This amendment reverts back to existing law.

Amendment 27.

Strikes the reference to 76-3-210 because that section is being repealed. See Amendment 37, below.

Amendments 28 and 29.

Make the following changes to 76-3-608(3)(a), (SB0110, Section 33):

... except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509 or in 76-3-609(2) or (4), ~~the impact~~ adverse impacts the impact on agriculture, agricultural water ~~user~~ use user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

MSK Comments: These amendments revert back to existing law.

Amendment 30. This amendments makes the following change to 76-3-609(2)(e), (SB0110, Section 34):

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in this subsection (2).

MSK Comments: Clarifies that a first minor subdivision is exempt from any public hearing including a subsequent hearing.

Amendments 31, 32, 33, and 34.

These amendments make the following changes to 76-3-615(2), (SB0110, Section 35):

~~(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to 76-3-605 constitute:~~

~~— (a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or~~

~~— (b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered~~ If a person at the final scheduled hearing or meeting on a subdivision application claims that information presented at that public hearing or meeting regarding the application has never before been presented to or considered by the governing body or its authorized agent or agency is new information, the governing body shall determine whether the information constitutes new information as provided in subsection (3) that has never before been presented to or considered by the governing body or its authorized agent or agency.

(3) If the governing body determines that the ~~public comments or documents constitute the information is new information as described in subsection (2)(b) (2) is new information~~, the governing body may:

MSK Comments: Further clarifies how local governments determine whether or not information received is "new" information, and whether or not a subsequent public hearing is necessary.

Amendment 35.

Repeals 76-3-210.

MSK Comments: The intent of 76-3-210 is now represented in 76-3-603(2), SB0110, Section 32, page 22.

Amendment 36.

Renumbers sections due to other sections being taken out of the bill. See Amendments 16 and 21.

Amendment 37.

This amendment adds the following language:

NEW SECTION. Section 39. {standard} Effective date - - applicability. [This act] is effective on passage and approval and applies on or after October 1, 2008."

MSK Comments: This amendment clarifies that local governments have until 10-01-2008 to make the changes required under SB0110.